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**DRAFTING COMMERCIAL AGENCY AGREEMENTS**  
**TO AMELIORATE**  
**MIDDLE EAST "DEALER PROTECTION" LAWS**

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Many Middle East countries have enacted so-called "dealer protection" laws. These laws provide various extra-contractual rights in favor of qualified commercial agents (and distributors), most notably a broad right to compensation upon the foreign principal's termination or non-renewal of the relationship without just cause. Terminated commercial agents may also be entitled, under some of these laws, to block the foreign principal's imports pending an amicable settlement or court judgment.

Foreign principals have developed various strategies to address these Middle East dealer protection laws. For example, many principals seek to ameliorate the more onerous aspects of these laws, through certain provisions in their commercial agency agreements. Foreign principals should recognize that such provisions, although perhaps helpful in some instances, may not be entirely effective: Middle East dealer protections are a matter of local public policy, and consequently Middle East courts may disregard contract provisions intended to deny those protections to a local commercial agent.

**1. Territory**

Some Middle East countries (like **Qatar**) are relatively small markets, and such countries probably should not be divided into smaller geographical sales territories. In other Middle East countries, however, foreign principals customarily limit the commercial agent's territory (such as designating specified emirates in the **United Arab Emirates** or specified provinces in

**Saudi Arabia**). Notwithstanding some Middle East dealer protection laws, a foreign principal might be able to further restrict the commercial agent's territory, by reserving the right to sell directly to certain (perhaps existing) customers without compensating the commercial agent.

## 2. Exclusivity

Under some Middle East dealer protection laws, a local commercial agent is deemed exclusive as to the territory covered by the commercial agency, regardless of any contrary provision in the parties' agreement. (In those jurisdictions, the foreign principal usually should require reciprocal exclusivity, i.e., that the commercial agent not promote or sell products which are competitive with the principal's products.) Under other Middle East dealer protection laws (such as in **Kuwait** and **Lebanon**), a foreign principal may appoint multiple non-exclusive commercial agents (or distributors), thereby significantly reducing the principal's exposure to dealer protections.

## 3. Products

Some foreign principals manufacture multiple product lines. Under law/practice in some Middle East countries, that principal may contractually limit its local commercial agency to one or more distinct product lines. (In some Middle East countries, like **Bahrain**, the principal might even limit its commercial agent to one particular brand of goods within the same product line.)

## 4. Specific and Detailed Obligations

Middle East commercial agency agreements should impose specific and detailed obligations on the local commercial agent (perhaps including minimum sales quotas), the non-performance of which the parties expressly agree constitutes justifiable cause for the principal's termination of the agreement.

## 5. Adequate Facilities

Some Middle East dealer protection laws (such as in **Oman**) require the principal to reimburse the commercial agent for expenses incurred in executing the commercial agency. In that light, some foreign principals insist that their commercial agency agreements contain certain representations and warranties from the commercial agent, for example, that it currently has and will maintain adequate facilities and staff to fulfill all its

obligations, and/or that it shall obtain the principal's approval before incurring expenses for which it seeks reimbursement.

**6. Compliance with Law**

Middle East commercial agency agreements should include a broad and detailed provision requiring the commercial agent to comply with all applicable laws. There are various good reasons for such a provision; in the context of Middle East dealer protection law, the provision might emphasize that the parties' relationship is contingent on the commercial agent satisfying all local qualification requirements.

**7. Term of Agreement**

In general, Middle East commercial agency agreements should be made for a short definite term, preferably no longer than two years, and not automatically renewable. Under some dealer protection laws (such as in **Jordan**), a commercial agent may face greater difficulty claiming non-renewal (rather than termination) compensation. A short definite-term agreement might also lessen the commercial agent's reasonable expectation of future profits.

**8. Cause for Termination**

Middle East commercial agency agreements usually describe the objective criteria (such as bankruptcy, change of ownership, or disqualification of the commercial agent) which the parties agree will constitute breach sufficient to justify the principal's termination of the relationship. However, Middle East courts probably will not enforce ambiguous performance standards (e.g., obliging the commercial agent to "adequately", "diligently" or "actively" market the products) or subjective measurement of breach (e.g., based solely on the judgment of the foreign principal).

**9. Effects of Termination**

Some foreign principals include a separate provision in their commercial agency agreements addressing the effects of termination, such as the principal's evaluation and repurchase of inventory, and the commercial agent's commitment to cease using the principal's trademarks and to de-register the agreement with any local government registry.

**10. Governing Law and Dispute Resolution**

Middle East dealer protection laws not only grant certain extra-contractual rights to commercial agents, but also usually authorize local courts to settle disputes arising under such laws. In that light, applicable dealer protection law may instruct or persuade a Middle East court to ignore foreign governing law and foreign dispute resolution clauses in a commercial agency agreement.

Nonetheless, those contractual clauses might have "defensive" value to a foreign principal. For example, a foreign dispute resolution clause may be helpful in the event the commercial agent obtains a local default court judgment against the foreign principal, and then attempts to enforce it outside the relevant Middle Eastern jurisdiction. When using such a foreign dispute resolution clause, however, the foreign principal should ensure that it has structured the commercial aspects of the arrangement to minimize its need to sue the commercial agent in the local (Middle East) jurisdiction.

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Middle East commercial agency laws are difficult to generalize, as each country has its own regulations and policies, with resulting differences in text, interpretation and administrative application. Moreover, some contractual strategies can be complex, and proper analysis will depend on the circumstances of the particular case.

This memorandum is intended to summarize some general aspects of drafting Middle East commercial agency agreements, but not to provide legal advice on any specific question of Middle East law.

HLS/bc  
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